

CITY OF BURIEN WASHINGTON

ORDINANCE NO. 621

(As Amended)

AN ORDINANCE OF THE CITY OF BURIEN, WASHINGTON, RELATING TO PUBLIC SAFETY AND WELFARE; AMENDING CHAPTER 9.125 OF THE BURIEN CITY CODE PROVIDING FOR THE EXCLUSION OF INDIVIDUALS FROM PUBLIC PROPERTY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, on August 18, 2014 the City Council adopted Ordinance No. 606, codified at BMC Chapter 9.125, creating a process for excluding individuals from public property who engage in dangerous, illegal or unreasonably disruptive behavior; and

WHEREAS, since adoption of Ordinance No. 606, concerns have been raised regarding the scope and meaning of certain provisions of the Code; and

WHEREAS, in the interest of addressing those and other concerns, the City Council has asked staff to propose revisions to the City Code; and

WHEREAS, the City Council has reviewed the proposed revisions and finds that passage of the amendments, as proposed herein, is in the best interests of the public health, safety and welfare;

NOW, THEREFORE, the City Council of the City of Burien, Washington, do ordain as follows:

Section 1. Amending BMC 9.125.015 (Definitions). Section 9.125.015 of the Burien Municipal Code is hereby amended (*amendments shown in legislative revision marks*) to read as follows:

9.125.015 Definitions.

(1) Behavior that is “dangerous” is behavior that creates an imminent and unreasonable risk of injury or harm to either persons or property of another or the actor.

~~(2) Behavior that is “unsafe” is behavior that creates an unreasonable risk of injury or harm to either persons or property of another or the actor.~~ (3) Behavior that is “illegal” is

behavior that is prohibited by the laws of the United States, Washington State, King County, or the city of Burien and that includes, but is not limited to, any of the following types of behavior:

(a) Threatening another person by communicating either directly or indirectly to another person the intent to cause bodily injury in the future to the person threatened or to any other person; or

(b) Selling or using alcohol or drugs; or

(c) Threatening or harassing behavior (e.g., fighting or threatening to fight, brandishing a weapon, stalking, verbally threatening to harm others or their property); or

(d) Assaulting staff or other patrons; or

(e) Sexual misconduct or harassment (e.g., indecent exposure, offensive touching, sexual acts).

(43) Behavior that is “unreasonably disruptive to other users” is behavior that is not constitutionally protected and that, in consideration of the nature, scope, use and purpose of the publicly owned property in question, unreasonably interferes with others’ use and enjoyment of said publicly owned property. Examples of behavior that is may unreasonably disruptive to interfere with others’ use and enjoyment of publicly owned property includes, but is are not limited to, any of the following:

(a) Use of unreasonably hostile or aggressive language or gestures; or

(b) Unreasonably loud vocal expression or unreasonably boisterous physical behavior; or

(c) Using electronic or other communication devices in a manner that is unreasonably disruptive to others; or

~~(d) Wearing insufficient clothing for the location’s use (e.g., no top, no bottom, no shoes); or~~

~~(e) Bodily hygiene or scent that is unreasonably offensive to others; or~~

~~(f) Unreasonably interfering with the free passage of staff or patrons in or on public property; or~~

~~(g) Behavior that is unreasonably inconsistent with the normal use for which the publicly owned property was designed and intended to be used (e.g., bathing, shaving, or washing clothes in a public bathroom or skateboarding in a public parking area or plaza).~~

(54) Any constitutionally protected action or speech is excluded from the prohibited behavior listed in this section.

Section 2. Amending BMC 9.125.020 (Trespass warnings on city and other property generally open to the public). Section 9.125.020 of the Burien Municipal Code is hereby amended (*amendments shown in legislative revision marks*) to read as follows:

9.125.020 Trespass warnings on city and other property generally open to the public. (1) Officers of the Burien police department shall be empowered to issue a trespass warning to any individual who the officer has probable cause to believe has violated ~~violates~~ any city ordinance, state statute, or government rule or regulation, relating to or prohibiting conduct that is dangerous, ~~unsafe,~~ illegal, or unreasonably disruptive to other users of public property, as defined in BMC 9.125.015, while such individual is on or within any city or other publicly owned facility, building, or outdoor area that is open to the general public, as more specifically set forth in BMC 9.125.010(3).

(2) Trespass warnings may be delivered in person to the offender or by first class mail to the offender at the offender's last known address.

(3) The offender need not be charged, tried, or convicted of any crime or infraction in order for the trespass warning to be issued or be effective. The warning may be based upon observation by a police officer or a city or other government employee or may be based upon a civilian report that would ordinarily be relied upon by police officers in the determination of probable cause.

(4) If the offender:

(a) Has not been excluded from city or other publicly owned property by a trespass warning issued within one year prior to the violation, then the warning may exclude the offender for a period not exceeding seven days from the date of the warning.

(b) Has been the subject of only one prior trespass warning issued within one year prior to the current violation, then the warning may exclude the offender for a period of more than seven days but not more than 90 days from the date of the current warning.

(c) Has been the subject of two or more prior trespass warnings issued within one year prior to the current violation, then the warning may exclude the offender for a period of more than 90 days but not more than one year from the date of the current warning.

(d) Has been excluded from city or other publicly owned property by a trespass warning, and a published rule or regulation applicable to such property establishes a different period of time for an offender to be excluded, the time period under such rule or regulation shall apply notwithstanding the provisions of section (4)(a), (b) or (c) above.

(5) The trespass warning shall be in writing, shall contain the date of issuance, shall describe the behavior that is the basis for the trespass warning, shall specify the length and place(s) of exclusion, shall be signed by the issuing police officer, and shall state the consequences for failure to comply. A trespass warning for a place or places shall not prohibit access to another place or places that is unrelated to or not a part of the place where the conduct that is the subject of the trespass warning occurred.

(6) For good cause shown by the offender, the city manager, or his or her designee, or other government official who is responsible for the property in question may rescind, shorten or modify a trespass warning issued for a period not exceeding seven (7) days. The City Manager may establish rules and procedures for seeking prompt review of a trespass warning issued for less than seven (7) days.

(7) An alleged offender receiving a trespass warning for a period longer than seven days may seek a hearing to have the trespass warning rescinded, the period of exclusion shortened, or the areas of exclusion reduced. The hearing examiner shall be the city's hearing examiner, unless the city designates another person as the hearing examiner. The request for a hearing shall be delivered to the city's legal department, 400 SW 152nd Street, Burien, WA 98166, and shall be postmarked no later than 15 days after the issuance date of the trespass warning. The request for hearing shall be in writing and shall be accompanied by a copy of the trespass warning on which the hearing is sought. Such requests shall be forwarded by the legal department to the hearing examiner. The hearing should occur within 30 days after the legal department receives the request for hearing or as soon as reasonably practicable. Hearings will be conducted upon written request only. The alleged offender shall have the right to engage an attorney and/or to bring a court reporter, at the alleged offender's own expense.

(8) At the hearing, the violation must be proved by a preponderance of the evidence in order to uphold the trespass warning. The hearing examiner shall consider a sworn report or declaration from the officer who issued the trespass warning or upon whose observation the trespass warning was based, without further evidentiary foundation, as prima facie evidence that the offender committed the violation as described. The hearing examiner may consider information that would not be admissible under the evidence rules in a court of law but that the hearing examiner considers relevant and trustworthy. If the warning was issued because of the alleged violation of any criminal law, the offender need not be charged, tried, or convicted for the warning to be upheld.

(9) If the violation is proved, the trespass warning shall be upheld, but upon good cause shown the hearing examiner may shorten the duration of the exclusion or reduce the areas covered by the exclusion. If the violation is not proved by a preponderance of the evidence, the hearing examiner shall rescind the exclusion. If the hearing examiner rescinds an exclusion, the exclusion shall not be considered a prior trespass warning for purposes of subsection (4) of this section.

(10) The decision of the hearing examiner is final. An offender seeking judicial review of the hearing examiner's decision must file an application for a writ of review in the King County superior court within 15 days of the date of that decision.

(11) The trespass warning shall remain in effect during the pendency of any administrative or judicial proceeding.

(12) No determination of facts made by the hearing examiner shall have any collateral estoppel effect on a subsequent criminal prosecution or civil proceeding and shall not preclude litigation of those same facts in a subsequent criminal prosecution or civil proceeding.

(13) This section shall be enforced so as to emphasize voluntary compliance with laws and city (or other governmental entity) property rules and so that inadvertent minor violations that would fall under subsection (4)(a) of this section can be corrected without resort to a trespass warning.

(14) Any person, who is found on city or other publicly owned property in violation of a trespass warning issued in accordance with this chapter for a period longer than seven days and who accordingly has had the right to a hearing regarding the trespass warning, may be arrested for trespassing, except as otherwise provided in subsection (15) of this section.

(15) The chief of police or his/her designee may upon request authorize an individual who has received a trespass warning in accordance with this chapter to enter city or other publicly owned property to exercise his or her First Amendment rights or to conduct government business, if there is no other reasonable alternative location to exercise such rights or conduct such business. Such authorization must be in writing and specify the duration of the authorization and any conditions thereof.

Section 3. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 4. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 5TH DAY OF JANUARY, 2015.

CITY OF BURIEN

/s/ Lucy Krakowiak, Mayor

ATTEST/AUTHENTICATED:
/s/ Monica Lusk, City Clerk

Approved as to form:
/s/ Chris Bacha,
Kenyon Disend, PLLC
Interim City Attorney

Filed with the City Clerk: January 5, 2015
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